Supreme Court, U.S.
FILED
JUN 11 1999
CLERK

(3)

No. 98-1505

In The

# Supreme Court of the United States

JESUS MANUEL FRIAS-MUNOZ,

*Petitioner,*

v.

MADELEINE K. ALBRIGHT,
SECRETARY OF STATE OF THE UNITED STATES,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## PETITIONER'S REPLY MEMORANDUM

Jesus Manuel Frias-Munoz
Pro Se
3405 Glendale Blvd.
Suite 105
Los Angeles, CA 90039
(323) 913-0026

8pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... ii

ARGUMENT ..... 1

STATEMENT OF FAMILY HISTORY ..... 2

STATEMENTS IN DOCUMENTS MORE THAN 20 YEARS OLD ..... 3

FORMER TESTIMONY ..... 3

FINDINGS OF GOVERNMENT INVESTIGATIONS ..... 3

BUSINESS RECORDS ..... 4

STATEMENTS WITH "EQUIVALENT CIRCUMSTANTIAL GUARANTEES OF TRUSTWORTHINESS" ..... 4

CONCLUSION ..... 6

# TABLE OF AUTHORITIES

Page

CASES

*United States v. Cain*, 130 F.3d 381 (9th Cir. 1997) *cert. denied*, 118 S. Ct. 1333 (1998) ..... 1

*United States v. Olano*, 507 U.S. 725, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993) ..... 1

FEDERAL RULES OF EVIDENCE

803(6) ..... 4

803(8)(C) ..... 3

803(16) ..... 3

804(b)(1) ..... 3

804(b)(4) ..... 2

807 ..... 4

## ARGUMENT

If you can define the question you can control the outcome of any issue. This is what the federal government is attempting to do in this case. This is evident if one reviews the question of this case as presented by both sides:

The question is the case as presented by the petitioner:

Whether the doctrine of invited error, as laid out in *United States v. Cain*, 130 F.3d 381, 383 (9th Cir. 1997) *cert. denied*, 118 S. Ct. 1333 (1998), permits a United States citizen to be denied his citizenship, and deported from the United States on the basis of illegally admitted hearsay evidence, or does the decision of this very court in *United States v. Olano*, 507 U.S. 725, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993) guarantee that United States citizenship is protected by the Constitutionally guaranteed right to due process of law.

The question in this case as presented by the respondent:

Whether the court of appeals properly declined to review petitioner's challenge to the admissibility of a sworn out-of-court statement on the ground that petitioner's trial counsel, who stipulated to admission of the document and relied on it at trial, intentionally waived any right to object to its admission. The question in this case is not whether trial counsel, for tactical reasons, chose to not object to the admission of an item of evidence which he did not realize was inadmissible hearsay. The question is whether we will strip a United States citizen of his rights in a trial corrupted by the admission of inadmissible hearsay.

The sworn out-of-court statement of Juan de la Cruz Frias was inadmissible hearsay, and as such it should have been excluded from evidence at trial. The fact that in previous pleadings the petitioner merely stated that it was hearsay and did not offer argument in support of this proposition is irrelevant. A party cannot be forced to prove a negative. Once petitioner established that the sworn out-of-court statement was hearsay it was the duty of the party offering the statement to demonstrate that it was covered by an exception to the hearsay rule.

At page 9 of their brief in opposition the government attempts to demonstrate that the sworn out-of-court statement is covered by an exception to the hearsay rule. Looking at the exceptions cited by the government, let us take a close look at the exceptions to the hearsay rule cited by the government.

## STATEMENT OF FAMILY HISTORY

This exception is laid out in Fed. R. Evid. 804(b)(4). But for it to be a statement of family history it must deal with affairs of the family. A statement of family history must deal with marriages, deaths or births. The proffered statement only dealt with the residence of Juan Frias. Family history specifically deals with marriages and the birth of children. This exception is simply irrelevant in this context.

## STATEMENTS IN DOCUMENTS MORE THAN 20 YEARS OLD

This exception is found at Fed. R. Evid. 803(16). For this exception to apply the hearsay document must be found where documents of its nature are regularly stored. In other words, if the document dealt with fiscal matters it must have been discovered in a place where fiscal documents are generally stored. Since this document dealt with the residences of Juan Frias for it to be covered by the ancient document exception to the hearsay rule it needed to be found where similar documents are regularly stored. This clearly was not the case, and as such this exception to the hearsay rule does not apply.

## FORMER TESTIMONY

For this exception, codified at Fed. R. Evid. 804(b)(1) to apply the proffered evidence must have been subject to cross examination. This did not occur here. The reason former testimony is permitted into evidence is because it is subject to cross examination, and as such is more believable. In this case the statements, although made under oath, were not subject to cross examination and there is no policy reason to suspect that the statements are true.

## FINDINGS OF GOVERNMENT INVESTIGATIONS

This exception, codified at Fed. R. Evid. 803(8)(C), requires that there be a government investigation. There was no investigation of the hearsay statements in this

case. Juan Frias made the statements, the government wrote them down, and the government used the statements for its own purposes. This exception simply does not and cannot apply based on the facts in this case.

## BUSINESS RECORDS

This exception, codified at Fed. R. Evid. 803(6) only applies to records kept in the regular course of business. It would best apply in a case where the issue under contention was the time a truck arrived at a terminal, and the terminal recorded, as part of its regular business the times that trucks arrived.

Additionally, the business records exception only applies to business situations. Governmental operations are not covered by this exception to the hearsay rule. As a consequence the respondent cannot claim that this exception resolves the hearsay problem in this case.

## STATEMENTS WITH "EQUIVALENT CIRCUMSTANTIAL GUARANTEES OF TRUSTWORTHINESS"

This exception, codified at Fed. R. Evid. 807 is a general catchall which only applies when no other exception applies and there are serious reasons to admit the hearsay. But in this case there exists no serious reason to admit the statements of Juan Frias. There is simply no reason to believe that he was telling the truth when he made his statement. There are many reasons to believe that he may have been lying.

The first reason that he may have been lying is because he thought, incorrectly, that if he admitted to having resided in the United States he would have had to prove that he resided in the United States. Remember that Juan Frias was a farm worker who, as far as we know, had no formal education. He may very well have held ideas which were wrong.

The hearsay statement issued by Juan Frias was made as part of an application by Juan Frias for admission into a farm workers program. His aim was to gain admission to the program. If he erroneously believed that significant periods of time in the United States would cause his admission to the program to be denied he had a motive to lie. Note that motive even if based on a mistake of fact is still motive.

This case calls out for remedy. An American citizen has been denied his citizenship based upon a flawed trial. It is fundamental under our system of laws that a party being denied his rights be permitted to face, confront and cross examine the witnesses against him.

In this case the main witness against Jesus Munoz-Frias, Juan Frias took his secrets to the grave with him. Being unable to cross examine Juan Frias the petitioner is denied his one chance to prove that he is a United States citizen. This violates all standards of fairness.

Rules exist for a purpose. We exclude hearsay not make trials complex or to create grounds for endless appeals. We exclude hearsay because experience has taught us that hearsay evidence is unreliable. Only if a witness is subject to cross examination can we even begin to be sure about his veracity.

Our system of law has created a hearsay rule which is subject to a limited number of exceptions. If a piece of evidence is hearsay it is excluded unless there exist clear exceptions which permit it to be admitted. These exceptions have been codified in the Federal Rules of Evidence, and none of these exceptions are controlling in this case. Absent an exception to the hearsay rule the out-of-court statements of Juan de la Cruz Frias should have been excluded at trial below. Since they were not the decision below was fatally flawed and this court has no choice other than to reverse the court below and order a new trial.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jesus Manuel Frias-Munoz
Pro Se
3405 Glendale Blvd.
Suite 105
Los Angeles, CA 90039
(323) 913-0026

June 1999